



OFFICE OF THE DISTRICT ATTORNEY
70TH JUDICIAL DISTRICT OF TEXAS
JIM WELLS AND BROOKS COUNTIES
P. O. DRAWER 3157
ALICE, TEXAS 78333

TELEPHONE
AREA CODE 512
308-5710

RICHARD C. TERRELL
DISTRICT ATTORNEY
JOE MIKE PENA
FIRST ASSISTANT
S.T. TAMEZ
INVESTIGATOR

ID# 12137
1075

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Opinion Committee

Ms. Susan Garrisonn
Acting Chairman, Opinion Committee
Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

Dear Ms. Garrisonn:

Thank you for your correspondence of February 20, 1991.
Enclosed please find a brief which I have prepared in accordance
with your correspondence.

I respectfully request an attorney general opinion to answer
the following two questions:

1. Is it proper for a magistrate to set a bail bond by
telephone?
2. Is it proper for a magistrate to have pre-set bail bond
amounts by posting a schedule at the county jail?

Thank you for your many regards.

Yours very truly,

Richard C. Terrell

RCT/jmm

BRIEF

1. Is it proper for a magistrate to set a bail bond by telephone?

Code of Criminal Procedure Article 14.06 requires that "...the person making the arrest shall take the person arrested or have him taken without unnecessary delay before some magistrate of the county where the arrest was made without an order..."

CCP Article 15.17 deals with the situation where the person is arrested under the authority of an arrest warrant. Like CCP Article 14.06, it is the arresting officer's duty to see that the accused is taken before a magistrate "without unnecessary delay." However, Article 15.17 requires that the person arrested be taken in person or his image be broadcast by closed circuit television, whereas, CCP Article 14.06 has no such requirements. The duties of the magistrate outlined under CCP Article 15.17 are also applicable to CCP Article 14.06.

CCP Article 17.03 states that "...a magistrate may, at the magistrate's discretion, release the defendant on his personal bond without sureties or other security" with certain enumerated exceptions. CCP Article 17.05 states that "(a) bail bond is entered into either before a magistrate, upon an examination of a criminal accusation, or...is taken from the defendant by a peace officer if authorized by Article 17.20, 17.21 or 17.22." CCP Article 17.15 outlines the rules and guidelines for fixing the amount of bail.

After reviewing the applicable provisions of the Code of Criminal Procedure, as well as the limited case law available, I cannot find any legal authority which would prohibit the setting of bail bonds by telephone as long as the magistrate setting the bail bond complied with the applicable provisions of the law.

2. Is it proper for a magistrate to have pre-set bail bond amounts by posting a schedule at the county jail?

CCP Article 17.05 states in pertinent part that "(a) bail bond is entered into either before a magistrate, upon an examination of criminal accusation, or...is taken from the defendant by a peace officer if authorized by Article 17.20, 17.21, or 17.22". CCP Article 17.15 sets out the rules for fixing the amount of bail. The clear intent of these two provisions of the Code of Criminal Procedure dictate that a magistrate have an examination of a criminal accusation, as well as an examination of the ability of an accused to make bond and the potential harm to the future safety of any alleged victim prior to the setting of the bail. Obviously, the setting of a bail by a pre-set schedule will not comply with the aforementioned sections of the Code of Criminal Procedure. It is therefore my opinion that the setting of bail by a pre-set schedule without the appropriate examination of a criminal accusation is improper.